

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

ROSFEL GARZA, #01181215	§	
VS.	§	CIVIL ACTION NO. 6:20cv322
LORIE DAVIS, ET AL.	§	

**ORDER ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Rosfel Garza, a prisoner confined at the Coffield Unit within the Texas Department of Criminal Justice (TDCJ), proceeding *pro se* and *in forma pauperis*, filed this civil rights lawsuit complaining of alleged violations of his constitutional rights. The case was referred to United States Magistrate Judge John D. Love for findings of fact, conclusions of law, and recommendations for the disposition of the case.

On February 22, 2023, Judge Love issued a Report recommending that Plaintiff's lawsuit be dismissed, with prejudice, for the failure to state a claim upon which relief may be granted. Docket No. 69. After receiving an extension of time in which to do so, Plaintiff filed timely objections. Docket No. 75.

The Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other*

*grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten days to fourteen days).

Plaintiff's objections are overruled. A review shows that Plaintiff failed to directly address the Report; rather, he merely relitigates his underlying claims—especially his claim that the water at the Coffield Unit is contaminated from “pig waste,” leading to H. Pylori infections. *See Nettles v. Wainwright*, 677 F.2d 404, 410 n.8 (5th Cir. 1982) (en banc) (“Parties filing objections must specifically identify those findings objected to.”), *overruled on other grounds by Douglass v. United Servs. Auto. Ass’n.*, 79 F.3d 1415, 1420 (5th Cir. 1996).

Here, Plaintiff identifies no error within the Magistrate Judge's Report. In fact, the United States Court of Appeals for the Fifth Circuit recently issued an opinion finding as frivolous and affirming this court's determination that a plaintiff's water/H. Pylori claims failed to state a claim upon which relief may be granted. *See Lee v. Davis*, 2023 WL 581639, at \*1 (5th Cir. Jan. 27, 2023) (dismissing appeal as frivolous and warning plaintiff that the district court's determination that his claim concerning allegedly contracting “H. pylori bacterial infection after consuming bad-smelling, dark-colored drinking water in prison” failed to state a claim upon which relief may be granted and constituted an additional strike under 28 U.S.C. § 1915(g)).

The Court has conducted a careful de novo review of the record and the Magistrate Judge's proposed findings and recommendations. *See* 28 U.S.C. §636(b)(1) (District Judge shall “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”). Upon

such de novo review, the Court has determined that the Report of the United States Magistrate Judge is correct, and Plaintiff's objections are without merit. Accordingly, it is

**ORDERED** that the Report and Recommendation of the United States Magistrate Judge (Docket No. 69) is **ADOPTED** as the opinion of the Court. Plaintiff's objections (Docket No. 75) are **OVERRULED**. Further, it is

**ORDERED** that Plaintiff's lawsuit is **DISMISSED**, with prejudice, for the failure to state a claim upon which relief may be granted. Any and all motions which may be pending in this action are **DENIED**.

**Signed this**

**Apr 7, 2023**

  
JEREMY D. KERNODLE  
UNITED STATES DISTRICT JUDGE